In the Supreme Court of the United States.

OCTOBER TERM, 1920.

JAMES J. RAFFERTY, COLLECTOR OF INTERNAL REVENUE FOR THE PHILIPPINE ISLANDS, *Petitioner*,

vs.

SMITH, BELL & COMPANY, LIMITED, *Respondent.*

No. 544.

Petition for Writ of Certiorari to the Supreme Court of the Philippine Islands.

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of James J. Rafferty, as Collector of Internal Revenue for the Philippine Islands, for a Writ of Certiorari to the Supreme Court of the Philippine Islands (accompanied by a certified copy of the transcript of the record as an exhibit hereto) for the review of a final judgment rendered against him herein by that court on March 15, 1920 for Pesos 306,716.46 with interest and costs, respectfully shows:

I.

Brief statement of the facts and circumstances. By Section 1614 of Philippine Act No. 2657, the Philippine Administrative Code of 1916, approved February 24, 1916, and effective from July 1, 1916, to October 1, 1917, it was provided that all merchants not specifically exempted should pay a tax of one per cent on the value of the merchandise sold, bartered, exchanged or consigned abroad by them. During periods from October 1, 1916 to September 30, 1917, the respondent, a merchant not so exempted, exported from the Philippine Islands to various persons and firms without the Philippine Islands, merchandise of the value of Pesos 30,671.643, and, your petitioner claims, thereby became liable under said section to taxes amounting to Pesos 306,716.43. Respondent paid said taxes to avoid penalties and under protest, the ground assigned in the protests being that said taxes were taxes on exports from the Philippine Islands the levy or collection of which was prohibited by the Act of Congress of August 29, 1916. The Autonomy Act (Philippine) Section 11 of the Act last mentioned provides among other things,

> "That no export duties shall be levied or collected on exports from the Philippine Islands." (39 Stat. 545, 548.)

(During the subsequent period from October 1, 1917 to December 31, 1917, the respondent exported

from the Philippine Islands to various persons and firms without the Philippine Islands merchandise of the value of Pesos 10,646,367, and as your petitioner claims, thereby became liable under Section 1459 of Philippine Act No. 2711, the Philippine Administrative Code of 1917, and in force since October 1, 1917,—a section which your petitioner insists is substantially the same as Section 1614 of the Administrative Code of 1916, as will be pointed out—to taxes of Pesos 106,463.62. Respondent paid such taxes to avoid penalties and under protest similar to those which have been mentioned. But for reasons which will appear no review is here sought in respect to the taxes which have accrued subsequent to September 30, 1917.)

II.

The proceedings which have been had in this action. This action was begun by respondent in the Court of First Instance of the City of Manila, Philippine Islands, February 7, 1918, against your petitioner to recover the sums so paid. To the complaint first a demurrer, and after that had been overruled, an answer were interposed in behalf of your petitioner by the Acting Attorney General of the Philippine Islands, the answer admitting the facts alleged but setting up that they were insufficient to constitute a cause of action. Upon the issue so

joined a decision (which was also a judgment) was rendered by that court on July 25, 1918, in favor of the respondent and against your petitioner for the said sum of Pesos 306,716.43, the claim for refund of taxes paid which had accrued subsequent to October 1, 1917, being in effect denied. A motion in behalf of your petitioner for rehearing was denied on August 10, 1918. From that judgment both parties appealed to the Supreme Court of the Philippine Islands. On March 15, 1920 judgment of that court was duly entered affirming the judgment appealed from with interest and with costs, motion in behalf of your petitioner for rehearing having been denied on January 27, 1920.

On March 18, 1920, notice was duly filed in behalf of your petitioner to the effect that he intended to petition this court for a writ of certiorari for the review of said judgment of the Supreme Court of the Philippine Islands, which is the highest court in which a decision of this action was or is possible, unless the cause be reviewed by this court.

On March 19, 1920, the Supreme Court of the Philippine Islands directed a stay of the execution of the said judgment for a period of six months.

III.

Grounds of the decision below. The reason given by both of the Philippine courts for their decisions

in regard to the taxes which had accrued prior to October 1, 1917, was in substance that their collection was prohibited by the section referred to above of the Autonomy Act, and in regard to those which had accrued subsequently to September 30, 1917, that their collection had been legalized by Act of Congress of June 4, 1918. That Act, the Deficiency Appropriation Act of 1918, provided that the taxes imposed by the section referred to above of the Act of the Philippine Legislature which took effect October 1, 1917,

> "* * * are hereby legalized and ratified, and the collection of all such taxes heretofore or hereafter is legalized, ratified, and confirmed hereby * * *" (40 Stat. 594, 597).

The court below disapproved the contention urged in behalf of your petitioner that the Act last mentioned in effect also legalized the collections made of taxes under the section of the prior Act of the Philippine Legislature mentioned above inasmuch as that section is substantially the same as the section, the collection of taxes under which was expressly so legalized.

IV.

The subsequent Act of Congress legalizing collections made of taxes under the section in question of the Philippine Act of 1916.

The Act of Congress of June 5, 1920, the Deficiency Appropriation Act of 1920, provides that the taxes imposed by Section 1614 of Philippine Act No. 2657, the section under which the taxes the judgment requires your petitioner to repay were collected,

> "* * * are legalized and ratified, and the collection of all such taxes made under or by authority of such Act of the Philippine Legislature is legalized, ratified, and confirmed as fully to all intents and purposes as if the same had by prior Act of Congress been specifically authorized and directed." (41 Stat. 1015, 1025.)

Since, as will be observed, that Act of Congress was not enacted until some months after the final judgment herein of the Supreme Court of the Philippine Islands had been fully perfected, and notice given of intention to apply to this court to review it, the obvious purpose of Congress in enacting it cannot be carried out in this case, unless a review be granted here.

V.

Effect in this cause of the ratification of 1920 by Congress. Had this cause been properly before the court of the Philippine Islands and not finally decided at the time when Congress so legalized, ratified, and confirmed all collections of taxes made under the section under which the collections the judgment requires repaid were made, the Supreme Court of the

Philippine Islands at any rate would presumably have found the Act of Congress of 1920 a valid and effective legalization of those collections and would not have rendered judgment herein against your petitioner. This follows, from the view taken by that court and by the court below it, as pointed out at III above, of the effect of the similar ratification by Congress of collections made under the Philippine Administrative Code of 1917.

That view accords also with the decisions of the Supreme Court of the Philippine Islands in the cases of Smith, Bell & Company, Limited, and of Macleod & Company, Inc., against your petitioner's successor, both about to be brought to the attention of this court, the former as No. 516 and the latter as No. 517, October Term, 1920.

VI.

Similar questions arise in several other pending cases which involve in the aggregate a very large sum. In Compania General de Tabacos de Filipinas against your petitioner, No. 13889 in the Supreme Court of the Philippine Islands (No. , October 1920 Term of this Court), and in Visayan Refining Company against your petitioner, No. 13887 in that court (No. , October 1920 Term of this Court), that court has affirmed judgments against your petitioner for Pesos 17,365.54 and Pesos 11,861.71 and interest, respectively, by reason of the collection of taxes from

the plaintiffs therein, pursuant to said Section 1614 of the Philipine Administrative Code of 1916, making with the amount of the judgment herein a total of Pesos 335,943.68 ($167,971.84), exclusive of interest and costs, and your petitioner is about to make applications to this Court for writs of certiorari for the review of the judgments against him in those cases.

Should your Honors reach the conclusion—contrary to the view of your petitioner—on the applications of Smith, Bell & Company, Limited, No. 516 and Macleod & Company, Inc., No. 517, which are about to be presented as stated at V above, that the question there involved calls for review of those cases by this court, then the amount indirectly involved in the decision of this and your petitioner's other applications referred to is much greater. The question involved in the former applications is whether the Act of Congress of June 4, 1918, described at III above, validated the collections of taxes it expressly purported to legalize as against claims on which suits were pending at the time of that enactment in which the Supreme Court of the Philippine Islands had not yet rendered decision, while in the cases of earlier origin in which the applications of your petitioner are made, that court had acted; so that unless we may start in the latter cases with the proposition that the decisions below in the former were correct, as your

petitioner believes, then *a fortiori* the cases of earlier origin involve the questions involved in those of later origin. Case No. 516 was brought to recover Pesos 206,555.30 and Case No. 517 Pesos 97,018.85; and a large number of other cases for the recovery of taxes paid under section 1459 of the Administrative Code of 1917 which is still in force are pending before the Philippine courts, involving in the aggregate several million dollars.

VII.

The constitutionality and construction of Acts of Congress involved. One of the questions involved in this case is whether in view of the fact that respondent had recovered final judgment for the refund of the taxes in question before the Act of Congress retrospectively legalizing their collection by express reference to the (Philippine) Act under which they had been collected, the enactment of that Act was within the power conferred upon that body by the Constitution, especially in view of the fact that by the Philippine Autonomy Act of Congress had previously prohibited any tax on exports from the Philippine Islands,—whether, in other words, respondent's judgment was such a vested interest as could not be disturbed by Congress. The views of your petitioner which he desires opportunity to urge before this court on review, are that respondent can have no vested interest in exemption from taxation on exports;

that since the judgment had not yet been executed and its execution is still stayed, respondent can have no vested right in its enforcement superior to the right of Congress to legislate in the premises, at least for the insular possessions, to which, it has been settled, the Constitution as such does not apply as it does for the States and the mainland of the United States proper; that in view of the special and peculiar relations of the Government of the Philippine Islands to the United States and of its courts to this court, the Act of Congress of June 5, 1920 is valid and effective as against respondent.

A question of construction directly involved is whether the Act of Congress of June 4, 1918 (before the judgment herein), purporting to validate expressly collections under the section of the Administrative Code of 1917, should not be construed as validating the section of the Administrative Code of 1916 here in question. The views of your petitioner are that that Act of Congress has that effect since in all respects here material the section in the earlier code is substantially the same as that of the later code; and that the tax imposed by those sections is not a "tax on exports" within the meaning of Section 11 of the Autonomy Act described briefly at I *supra*. A similar question arises respecting Act of Congress of July 1, 1916 (39 Stat. 262, 286).

VIII.

Interests of the United States and of a Sovereignty Directly Subsidiary to it, Involved. The judgment of which a review is hereby sought was recovered for proceedings taken by your petitioner in pursuance of a law of the Government of the Philippine Islands, the most important of the insular possessions which belong to and are under the protection of the United States.

It is your petitioner's view that in substance and effect the action is one against the Government of the Philippine Islands within the rule laid down by this court in *Lankford vs. Platte Iron Works Company, 235 U. S. 461* and other cases.

That, your petitioner insists, has an important bearing also in his favor upon the questions mentioned at VII *supra* and upon other questions involved.

Also for that reason costs should not have been awarded against your petitioner.

IX.

The judgment is erroneous and unjust to your petitioner for the reasons which have been indicated above.

X.

Prayer. In view of the manifest importance to the jurisprudence of the United States and, through the principal of its territorial possessions, to the financial and moral interests ot the Nation, of certain

of the questions involved as indicated above, the obvious novelty of some of them, the large amount involved, and the serious injustice to your petitioner of the judgment, your petitioner respectfully prays:

(a) That a writ of certiorari may be issued out of this court and under its seal, directed to the Supreme Court of the Philippine Islands, commanding that court to certify and send to this court, on a day certain to be therein designated, a full, true and complete transcript of the record, and all the proceeding of that court in this cause, to the end that in so far as it includes judgment against your petitioner, the same may be reviewed and determined by this court, in accordance with the statute in such case made and provided;

(b) That so much of the judgment of the Supreme Court of the Philippine Islands as adjudges recovery by the respondent from your petitioner, may be reversed by this court, and this cause remanded with the directions proper in the premises;

(c) That the stay of the execution of the judgment herein be continued pending the hearing and determination of this application, and if the application be granted, then also pending the final determination by the court on review;

(d) That your petitioner may have such other and further relief or remedy as to this court may seem just.

CHARLES MARVIN,
Attorney for Petitioner.

CERTIFICATE OF COUNSEL.

I hereby certify that I have carefully examined the foregoing petition, and, in my opinion, the same is well founded and the case is one in which the prayer of the petitioner should be granted by this court.

CHARLES MARVIN,

Attorney for Petitioner.

Washington, September 15, 1920.

NOTICE OF SUBMISSION, ETC.

To SMITH, BELL & COMPANY, Respondent:

You will please take notice that a petition, of which the foregoing is a copy, together with a copy of the record in this case in the Supreme Court of the Philippine Islands, (bearing No. 14466 on the docket of that court) duly certified by the clerk thereof, was filed with the Clerk of the Supreme Court of the United States on September 15, 1920, and that the petition will be submitted on October 18, 1920, at the opening of the court on that day at 12 o'clock noon, or as soon thereafter as counsel can be heard.

CHARLES MARVIN,
Attorney for Petitioner.

Washington, D. C.
October 2, 1920.

ADMISSION OF SERVICE.

Due service of printed copies of the foregoing petition and of the record in the Supreme Court of the Philippine Islands, and of the above notice, on this day of October, 1920, is hereby admitted.

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Attorney for Smith, Bell & Company, Limited, Respondent.